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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE - Chairman  
BOB STUMP  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BRENDA BURNS

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AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

AUG 3 2011

DOCKETED BY

IN THE MATTER OF:

GEORGE BIEN-WILLNER, for  
GLENDALE & 27<sup>TH</sup> INVESTMENTS, LLC

COMPLAINANT,

v.

QWEST CORPORATION,

RESPONDENT.

DOCKET NO. T-01051B-10-0200

PROCEDURAL ORDER

**BY THE COMMISSION:**

On May 17, 2010, George Bien-Willner, for Glendale & 27<sup>th</sup> Investments, LLC ("Complainant") filed with the Arizona Corporation Commission ("Commission") a Formal Complaint ("Complaint") against Qwest Corporation ("Qwest"). The Complaint alleges that Qwest has incorrectly billed Complainant, who owns and operates Sterling International Hotel, for a 1-800 line that should have terminated in 2004. Complainant requests relief in the amount of approximately \$10,000.

On June 10, 2010, Qwest filed an Answer to the Complaint, denying the allegations alleged in the Complaint. Qwest's Answer states that as a gesture of goodwill, and not as an admission of liability, Qwest provided Complainant a back credit to July 2009 and Qwest requests that the Commission dismiss the Complaint.

On August 16, 2010, by Procedural Order, Qwest's Motion to Dismiss was denied and a procedural conference was set for September 8, 2010.

On August 20, 2010, Complainant filed a letter requesting that the procedural conference scheduled for September 8, 2010, be rescheduled for early October, due to a conflict in Complainant's business schedule.

1 On August 26, 2010, Qwest filed a response to Complainant's request for a continuance of the  
2 procedural conference. Qwest stated that it had no objection to the continuance and requested to  
3 appear telephonically if the newly scheduled date conflicted with Qwest counsel's travel schedule.

4 On August 27, 2010, a Procedural Order was issued continuing the procedural conference to  
5 October 7, 2010, and Qwest's request to appear telephonically was granted.

6 On October 7, 2010, the procedural conference was held as scheduled. Qwest appeared  
7 through counsel, and Complainant appeared on his own behalf. During the procedural conference,  
8 the parties requested that Staff conduct an informal mediation to provide clarification on the issues  
9 involved in the Complaint and to see if settlement of the issues was possible.

10 By Procedural Order dated November 4, 2010, Staff was directed to engage in an informal  
11 mediation with the parties in an effort to clarify the issues involved in the Complaint and to determine  
12 if settlement of the issues is possible.

13 On December 7, 2010, Staff filed a Motion to Forego Staff Participation in Informal  
14 Mediation. Staff stated that it had reviewed the issues in this matter during the informal complaint  
15 proceeding; that Staff acted as a mediator during the informal process; that the informal process  
16 allows complainants who are unfamiliar with Commission proceedings to attempt to resolve their  
17 issues in a more relaxed setting; that both Complainant and Qwest are familiar with Commission  
18 proceedings; and that additional informal proceedings are unnecessary. Staff stated that re-examining  
19 the issues at the informal complaint level would be an inefficient use of Staff's limited resources and  
20 that this matter should continue as a Formal Complaint.

21 On December 10, 2010, Complainant filed a Response to Staff's Motion ("Response"), stating  
22 Complainant is entitled to participate in the informal complaint process under A.A.C. R14-2-510.

23 On January 5, 2011, Staff filed its Reply in Support of Staff's Motion ("Reply"), reasserting its  
24 position that the matter should proceed through the Formal Complaint process. Staff stated that  
25 Complainant will be afforded due process through the Formal Complaint proceeding.

26 On February 15, 2011, Complainant filed a letter requesting immediate assistance in  
27 addressing the issues raised in this docket. Complainant's letter further stated that Complainant  
28 believes that this matter has been unjustly delayed to the benefit of Qwest.

1 On February 17, 2011, a Procedural Order was issued granting Staff's Motion. The  
2 Procedural Order also scheduled the hearing in this matter to commence on May 2, 2011, and  
3 established deadlines for filing testimony and responsive testimony.

4 On March 3, 2011, Complainant filed Discovery Interrogatories and a Request for Production.

5 On March 17, 2011, Complainant filed a witness list. On the same day, Complainant  
6 docketed a response to Qwest's letter of inquiry dated March 14, 2011.

7 On April 1, 2011, Qwest filed a Motion for an Order Revising the Procedural Schedule, and  
8 Compelling Complainant to Comply ("Motion"). Qwest's Motion stated that Complainant had failed  
9 to file written testimony as directed by the Procedural Order issued on February 17, 2011, and that  
10 without written testimony Qwest was unable to prepare its responsive testimony. Qwest requested  
11 that Complainant be directed to provide written testimony prepared by each of Complainant's  
12 witnesses and that the procedural schedule be revised to allow Complainant to file written testimony  
13 and Qwest to file responsive testimony. Qwest further requested that Complainant be admonished for  
14 failing to comply with the Procedural Order and that Complainant be informed that future failure to  
15 comply could result in dismissal of the Complaint.

16 On April 13, 2011, by Procedural Order, Qwest's Motion was granted. Complainant was  
17 again directed to file written testimony for its witness(es) with a new deadline of May 10, 2011.  
18 Complainant was put on notice that its failure to file written testimony and to abide by the procedural  
19 deadlines established in the Procedural Order could result in dismissal of the Complaint.

20 On May 11, 2011, Complainant filed a witness list naming two witnesses and including one  
21 sentence describing each witness' testimony.

22 On May 23, 2011, Qwest filed a Motion to Dismiss ("MTD"). The MTD states that based on  
23 Complainant's failure to file written testimony and associated exhibits, as twice directed by  
24 Procedural Order, the Complaint should be dismissed. The MTD further states that Complainant's  
25 vague descriptions do not articulate facts that would tend to support the Complaint; that they lack any  
26 specific allegations of wrongful acts committed by Qwest or any allegations of resulting harm for  
27 which the Commission might provide redress. The MTD states that Complainant's witnesses will  
28 testify about billing issues and inaccurate account billings, but does not provide basic facts

1 surrounding the Complaint, such as the telephone services involved, the time periods, the account  
2 numbers, or the charges disputed. Qwest further states that Complainant's summary of testimony  
3 raises new issues not alleged in the Complaint. Based on the lack of information provided by  
4 Complainant, Qwest states that it cannot reasonably prepare for hearing or prepare written testimony  
5 in its defense. Therefore, Qwest requests that the Complaint be dismissed.

6 On June 1, 2011, Complainant filed a Response to Qwest's Motion to Dismiss and a Motion to  
7 Compel Discovery Responses. Complainant's response states that Complainant filed a half-page  
8 Complaint; that Complainant has requested (on March 3) discovery from Qwest and has not received  
9 the discovery; that Qwest's insistence on detailed, advance written testimony and exhibits will have  
10 little impact on the outcome of the case; and that Complainant has failed to provide exhibits and other  
11 information because Qwest has not responded to its discovery requests. Complainant requests that the  
12 Commission order Qwest to respond to the discovery requests. Complainant's response states that  
13 imposing a requirement to file written testimony and exhibits is unwarranted and unjust and in  
14 conflict with Commission rules. Complainant requests that Qwest's MTD be denied.

15 On June 7, 2011, Qwest filed a Reply in Support of its Motion to Dismiss and a Response to  
16 Complainant's Motion to Compel Discovery. Qwest reiterated that the Complaint should be  
17 dismissed based on Complainant's repeated failure to file written testimony; that Complainant's  
18 generalized and unsupported allegations may raise issues outside of the scope of the Complaint  
19 during the hearing; that Complainant never served its (March 3) discovery request on Qwest, but  
20 instead filed it in the docket; and that Complainant did not raise the issue of the March 3 discovery  
21 with Qwest until Complainant filed its response. Qwest requests, that if the Complaint is not  
22 dismissed, that the Commission alternatively grant Qwest time to respond or object to the March 3  
23 discovery request.

24 On July 1, 2011, by Procedural Order, the hearing scheduled for July 11, 2011, was converted  
25 from a hearing to a procedural conference because Complainant had twice failed to comply with  
26 orders to file written testimony and associated exhibits related to the Complaint. Based on  
27 Complainant's failure to comply the evidentiary proceeding could not move forward. The Procedural  
28

1 Order advised Complainant that failure to appear for the procedural conference could result in the  
2 dismissal of the Complaint.

3 On July 6, 2011, Complainant docketed a letter stating that beginning on July 3, 2011, he  
4 would be out of state for several weeks. Complainant requested that the procedural conference  
5 scheduled for July 11, 2011, be postponed or, alternatively, that Complainant be allowed to appear  
6 telephonically.

7 On July 11, 2011, the procedural conference was held as scheduled. Qwest appeared through  
8 counsel and Complainant appeared telephonically on his own behalf. Discussions were held  
9 regarding Complainant's failure to comply with the previous orders issued in this proceeding.  
10 Complainant reiterated that the half-page Complaint provides sufficient information for Qwest to file  
11 responsive testimony and that Complainant should not be required to file written testimony and  
12 associated exhibits in this matter. Complainant was advised that the Complaint lacks sufficient  
13 information to ascertain the issues that need to or can be resolved by the Commission and that an  
14 Amended Complaint would be required, specifically discussing all claims, actions requested to be  
15 taken by the Commission, and any other requested relief. Further, Complainant was advised that the  
16 failure to file an Amended Complaint, with the specificity described above could result in the  
17 Complaint being dismissed.

18 Therefore, it is now appropriate to memorialize the requirements for Complainant to file an  
19 Amended Complaint. Complainant's Amended Complaint, shall at a minimum, include the identity of  
20 the aggrieved party; the claims of the aggrieved party; what actions the Complainant is requesting the  
21 Commission to take regarding those claims; and citations to Statutes and/or Commission Rules under  
22 which the Commission may grant relief on the claims.<sup>1</sup> The failure of Complainant to file an  
23 Amended Complaint including the minimum specificity described above may result in the dismissal  
24 of this Complaint.

25 IT IS THEREFORE ORDERED that **Complainant, on or before September 2, 2011, shall**  
26 **file an Amended Complaint that includes at a minimum, the identity of the aggrieved party; the**  
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28 <sup>1</sup> A.A.C. R14-3-106 (L).

1 claims of the aggrieved party; what actions the Complainant is requesting the Commission to take  
2 regarding those claims; and citations to Statutes and/or Commission Rules under which the  
3 Commission may grant relief on the claims.

4 IT IS FURTHER ORDERED that **Complainant's failure to file an Amended Complaint**  
5 **including the minimum specificity described above may result in the dismissal of this**  
6 **Complaint.**

7 IT IS FURTHER ORDERED that **Qwest shall file, on or before September 26, 2011, an**  
8 **answer to Complainant's Amended Complaint.**

9 IT IS FURTHER ORDERED that the **hearing** in the above-captioned matter is continued to  
10 **February 13, 2012, at 10:00 a.m.,** or as soon thereafter as is practicable, at the Commission's  
11 offices, 1200 West Washington Street, **Hearing Room 100,** Phoenix, Arizona 85007.<sup>2</sup>

12 IT IS FURTHER ORDERED that **Qwest shall file, on or before October 11, 2011, a**  
13 **response and/or objections to the March 3, 2011, discovery request submitted by Complainant.**

14 IT IS FURTHER ORDERED that the **detailed direct testimony and associated exhibits** to  
15 **be presented at hearing by Complainant and any witness(es) Complainant will have testify at**  
16 **hearing shall be reduced to writing and filed on or before November 14, 2011.**

17 IT IS FURTHER ORDERED that the **rebuttal testimony and associated exhibits** to be  
18 **presented at hearing by Qwest and any witness(es) Qwest will have testify at hearing shall be**  
19 **reduced to writing and filed on or before on or before December 12, 2011.**

20 IT IS FURTHER ORDERED that the **surrebuttal testimony and associated exhibits** to be  
21 **presented at hearing by Complainant or any witness(es) Complainant will have testify at hearing**  
22 **shall be reduced to writing and filed on or before December 26, 2011.**

23 IT IS FURTHER ORDERED that **any objections to testimony or exhibits** that have been  
24 **filed as of December 26, 2011, shall be filed on or before January 9, 2012.**

25 IT IS FURTHER ORDERED that any substantive corrections, revisions, or supplements to  
26 the pre-filed testimony shall be reduced to writing and filed no later than **January 20, 2012.**

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28 <sup>2</sup> During the July 11, 2011, Procedural Conference, tentative dates for the continuation of this proceeding were discussed;  
however, due to the Hearing Division's calendar, those dates are being revised herein.

1 IT IS FURTHER ORDERED that **Complainant and Qwest** shall file a joint Status Report  
2 discussing any issues that have been resolved and how they were resolved on or before **January 20,**  
3 **2012.**

4 IT IS FURTHER ORDERED that any **Responses to Motions** shall be filed within five days  
5 of the Motion.

6 IT IS FURTHER ORDERED that any **Motions** which are filed in this matter and which are  
7 not ruled upon by the Commission within 20 days of the filing date of the Motion shall be deemed  
8 denied.

9 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized  
10 Communications) continues to apply to this proceeding.

11 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules  
12 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

13 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance  
14 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (Arizona Supreme  
15 Court Rule 42). Representation before the Commission includes the obligation to appear at all  
16 hearings and procedural conferences, as well as all Open Meetings for which the matter is scheduled  
17 for discussion, unless counsel has previously been granted permission to withdraw by the  
18 Administrative Law Judge or the Commission.

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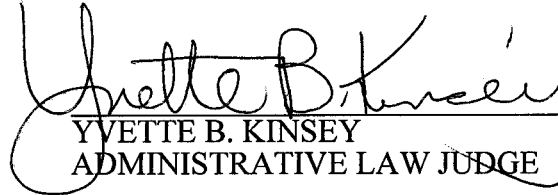
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1 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,  
2 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at  
3 hearing.

4 DATED this 3<sup>rd</sup> day of August, 2011.

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YVETTE B. KINSEY  
ADMINISTRATIVE LAW JUDGE

9 Copies of the foregoing mailed/delivered  
10 this 3<sup>rd</sup> day of August, 2011, to:

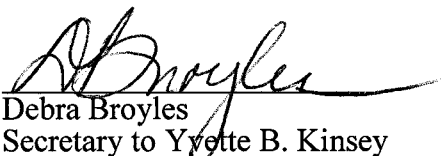
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